85-1475

CASE NO. _____

Supreme Court, U.S.
FILED
MAR 6 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

GEORGE KALIN and FAMILY

Petitioner

VS

RICHARD M. CASILLAS

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of

Appeals for the Fifth Circuit

GEORGE KALIN PRO-SE
144 Whiteram Close N.E.
Calgary, Alberta Canada
Telephone (403) 293-2393

Questions presented

1. Whether governmental and judicial actions infringed Plaintiff Constitutional and Statutory rights.

2. Whether a violation of due process of Law and obstruction of Justice occurred.

3. Whether the District Judge, the Fifth Circuit Court of Appeals Judges and the Attorney General suppressed the truth and made false statements (18 U.S.C. 1001).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitution: U.S. Const. art. VI(3) and U.S. Const. amend. V and VIII.

Statutes: 18 U.S.C. §242, §1001, §1621

Title 8 U.S.C. §242, §1105a, §1357a,

Title 5 U.S.C. §552a g.1.c. §554(c)1,2

P.L. 97 116 sec 19

Title 28 U.S.C. §1332, §1346, §1350

Regulations: 8 C.F.R. 212,8(b)(4),

GROUNDS FOR Jurisdiction

This Court has Jurisdiction under Title 28 U.S.C. 1254(3). This action involves Important Questions of Federal Law, which need to be settled by this Court.

Reason for Allowance of Writ

1. The Judgements rendered by the District Court and the Fifth Circuit Court of Appeals was totally irrelevant to the case presented and the issues therein.

2. The incorporation of their decision of Case 85-4327 is also unjustified, because that case was never heard or tried and was not a published opinion. the only issue in that case, whether Law 241(a)(1) is a valid Law was never decided.

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THE CASE IN BRIEF

The steel pins in my shoulder, the result of an injury I recieved as a professional Rodeo Cowboy, had a painful effect on me whenever the temperature dropped below zero. To allievate myself from this, we started looking for a place somewhere south to spend the winters. Upon inquiring in 1974, the U.S. Consulate in Calgary informed us that under the Investors Act 212 8(b)(4), with an Investment of $10,000 we would be given alien residence status, be exempt from Labor Certification, be given Social Security Cards and would be able to do business just like home in Alberta, without having to become U.S. Citizens. Since we preferred to stay Canadian Citizens, this seemed like a perfect opportunity for us and we proceeded to take advantage of this Act. In October 1976, the minimum investment under that Act rose to $40.000.

That Act defined an Investor as:

an alien who establishes on Form I-526 that he has invested, or is actively in the process of investing, capital totaling at least $40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States of which he will be a prinicpal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permnanent residence, exclusive of the alien, his spouse and children. A copy of a document submitted in support of Form I-526 may be accepted though unaccompanied by the original, if the copy bears a certificate by an attorney, typed or rubber-stamped in the language set forth in §204.2(f) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

We qualified that year with our first investment in Hawaii and proceeded with further investments in San Antonio, Texas, where we purchased property to build an apartment house, which would eventually be the headquarters of our later to be built hardware manufacturing plant. Up to that point, we had no problems at all. Over the years, we sold

our business property in Alberta and in 1981, my wife sold our house and in July of that year, with our three children started out to join me in San Antonio, Texas. After visiting Grandma and Grandpa on the farm in Manitoba, they attempted to enter the United States at Westhope, N.D. on July 2, 1981.

However, the Immigration Officer there refused to admit them, saying they needed to be in possession of alien Investors cards, to be admitted as such. His superior officer, Mr. Albert Bauman agreed with him, not to admit them even under visitors status, until the San Antonio I.N.S. confirmed my legal status.

I immediately phoned Officer Bauman at Ph. No. 701 926 4221 at 8.14 AM and discussed this matter with him for 18 minutes. I told Officer Bauman, that we had since 1976 qualified for Investors status under 8 C.F.R. 212.8(b)(4), that

pending legal ruling, my family was entitled to enter for a 6 month stay under visitors status, that by treaty, Canadian and U.S. citizens do not require passports or visas to enter each others Country, which is also documented in 8 C.F.R. 212(1)(a). We would apply for alien registration cards as required at the I.N.S. Offices in San Antonio. The application for such need not be made prior to entering, but can be lawfully made from within the country. Officer Bauman agreed in general, but would first check with the San Antonio I.N.S. regarding my status. He would get it on right away and let me know. Eighty eight minutes later at 10 AM I received a collect call from the Immigration Officer at Westhope N.D. (Phone No. 701 245 6194) advising us that the San Antonio I.N.S. had declared us all illegal aliens. He admitted to be baffled by the fact that my wife

was declared an illegal alien while she was still in Canada and advised me to go first thing Monday morning to the I.N.S. there, with all our Property titles and receipts and prove to them the status we claim.

On July 8, 1981 at 2.26 PM I phoned Officer Bauman again and told him of the problem that I encountered with the San Antonio I.N.S., that I met with Mr. Bangs, the Assistant Director of Immigration on July 6, 1981 and that Mr. Bangs then discussed this matter further with Mr. Casillas, the District Director of I.N.S. and ruled on July 7, 1981 that: we had moneywise more than qualified, however, Canadian citizens were excluded from the Investors Act. On that bases denied me application for alien residence on Form I 526 and refused to adjust my status under U.S.C. §1255a and declared me an illegal alien.

Mr. Bauman stated that he felt sorry for us, but there was nothing further he could do for us, because the matter was now entirely in the hands of the San Antonio I.N.S., that he would inform all Border Crossings to be on the lookout for my wife and children, in case they tried to cross the Border someplace else.

Outraged by the obvious false statements and discrimination against Canadian citizens, I immediately contacted various Government Officials in Washington. Our member of Parliament in Canada, Mr. Bert Hargrave, contacted the Dept. of External Affairs and the U.S. Ambassador to Canada, as well as the U.S. Consul in Calgary.

On July 13, 1981 I received a phone call from the Secretary Commissioner of I.N.S. Office in Washington, D.C. He informed me that the problems we encountered was due to the fact that the Investors Act had been changed in

1978, however, since we had already qualified at that time and were in the process of further investing, we were indeed eligible for alien residence, that my family would be admitted as such at Sweetgrass, Montana, that alien registration cards must be applied for at the I.N.S. Office of the area of residence and we do so immediately upon arrival in San Antonio.

My family was inspected and admitted for alien residence at Sweetgrass, Montana July 14, 1981 arriving in San Antonio, July 18. On Monday morning July 20, we phoned requesting an appointment with Mr. Bangs of the San Antonio I.N.S., to apply for alien registration cards, however, Mr. Bangs refused to see us. In his opinion nothing had changed, that we were still illegal aliens subject to arrest and deportation. Besides that, issuing alien registration cards to was

in his opinion the resposiblity of the U.S. Consulate in Calgary.

I told him that I had some documents, letters, notes, names and phone numbers from variuos Government Officials to give him containing proof that Canadians were not excluded from the Investors Act. Waiting in front of his office, he finally asked me in, but refused to accept the documents that I laid on his desk and without examining them, threw them in the wastebasket and in his words, for the last time explained that we were illegal aliens, that Assistant U.S. Attorney Mr. Ball, who had taken a complete statement from me on July 10, and the I.N.S. Director Mr. Casillas determined so. They did it because the I.N.S. booklet he allowed me to examine, contained the names of the countries which qualified under the Investors Act and Canada was not named in it, thus we were

just as illegal as all the Mexicans there. I insisted that there was plenty of evidence, that his list had no such application and that declaring us illegal aliens without Judge or Jury and due process of law, was a constitutionl violation of our rights and violated their own rules: 8 U.S.C. 287(a)(2) which required absolute duty to present all aliens, within 24 hours to specified class of officers for determination, whether or not alien is in violation of law. The Administrative and procedure 542 F.Supp. 706, 1982 states: administrative agency must adhere to its own rules and regulations as a matter of procedural rights guaranteed by the regulation themselves.

He acknowledged that Mr. Casillas and Mr. Ball determined us illegal aliens and no matter who in Washington said otherwise, their decision would stand,

but since Washington let us in, maybe that would be the place to go and get our "green cards".

After discussing this matter as a family the decision to go back home was unanimous. Thus we wrote to Mr. Bangs and Mr. Casillas explaining that we'd gladly go back home if they would lift the illegal status off us so we could go home freely, and I could return under visitors status exempt from the penalties of unlawfully reentry to complete and sell the apartment house and all holdings in the U.S.A. When we recieved no answer, we wrote again, and again. When we recieved no reply, we wrote to Mr. O Connor, the Regional Commissioner in Dallas, Texas. When we recieved no reply from him, we wrote to the Commissioner of I.N.S. in Washington, D.C. On August 11, 1981, Assistant Commissioner Francis P. Murphy replied to our letter.

Dear Mr. Kalin: August 11, 1981

This will acknowledge receipt of your letter dated July 29, 1981, concerning your desire to remain in the United States for an additional 18 months.
I am forwarding a copy of this letter with your correspondance to the Regional Commissioner, Dallas Texas, since he has jurisdiction over the San Antonio office. A copy of the correspondance is also being forwarded to the District Director, San Antonio, Texas.
I am confident that the Regional Commissioner and District-Director will assist you as far as possible consistent with current law and regulations.
Sincerely,
Francis P. Murphy
Assistant Commissioner
Adjudications

Although the above named letter is dated August 11, 1981, the Acting Assistant U.S. Attorney General Richard K. Willard, Assistant Director Robert Kendall and Attorney Linda B. Adams testified to the Fifth Circuit Court of Appeals that:

"Although Petitioners have alleged that their I.N.S. Records of 1981, 1982, and 1983 are completely missing, respondent has not at any time had records in its possession pertaining to petitioners prior to 1984."

We waited for several weeks for some action, before we wrote to I.N.S. Director Mr. Casillas and I.N.S. Commissioner Mr. O Connor again. Still no response. I made several attempts for an appointment with Mr. Casillas, however his secretary would not allow me to see him without an appointment and refused to make an appointment for me because Mr. Bangs was on our case and he was the most senior officer there. A request to see Mr. O Connor, the regional Commissioner in Dallas was also denied us, no reason given. Several attempts to talk to Mr. Casillas on the phone, also failed until one day, when I phoned and simply identified myself to his secretary as George, could I talk to Richard. She patched me through. Mr. Casillas assured me that he was well aware of our case. When I complained that Mr. Bangs mishandled our case, he said "I have complete

confidence in Mr. Bangs, as I have in all my staff." To my charge that we were being imprisioned here, he replied "We are not holding you here, you are free to go, nobody is holding you, getting back is a different case." When I asked him why he denied our application on Form I 526 and refused to adjust our status under 8 U.S.C. 1255(a)*, he started shouting at me that I was trying to tell him how to run his business, etc. His continuous shouting prompted me to hang up.

* Statute 8 U.S.C. 1255(a) provides:

> The status of an alien who was inspected and admitted or paroled in the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to recieve an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

The complete ignorance and unreasonable delay by the I.N.S. created an ever increasing fear and distress of sometimes unbearable proportions to our entire family. It certainly was a factor in my getting an ulcer and constituted cruel and unusual punishment. We again wrote and appealed to various government officials, including several letters to the U.S. Attorney General, President Reagan, and Chief Justice Warren Burger.

On Febraury 27, 1984, the White House requested Mr. Casillas to take action. The letter reads as follows:

THE WHITE HOUSE OFFICE

FEBRAURY 27, 1984

TO: DEPARTMENT OF JUSTICE
ATTN: INS

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

REMARKS: ALSO REFERRED TO DOS - NOT CERTAIN WHO HAS JURISDICTION

DESCRIPTION OF INCOMING:
ID: 208200
MEDIA: LETTER, DATED JANUARY 10, 1984

TO: PRESIDENT REAGAN
FROM: MR. GEORGE KALIN
1021 BREEDEN
SAN ANTONIO TX 78212

SUBJECT: NO ANSWER TO PREVIOUS LETTER, COPY ATTACHED, SEEKING HELP WITH IMMIGRATION PROBLEMS

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

Shortly thereafter, all our files disappeared from the I.N.S. fileroom and Mr. Casillas and his Department proclaimed to have "no knowledge" of us. On Febraury 2, 3, 10, 16, 22, or 23, all these dates appear on various I.N.S. documents, as the date we were apprehended and deportation proceedings began. The truth is we were never apprehended. However, deportation proceedings

were held on March 6 and on April 12, 1984. Immigration Judge Arvid C. Boyes, convicted us of being illegal aliens under Law 241(a)(1) of the Immigration Act.

We appealed Judge Boyes decision to the Board of Immigration Appeals (B.I.A.) by reason that the Judge had made his decision without reasonable, substantial, and probative evidence prior to Court and had it with him in writing when he entered the Court and that the Act 214(a)(1), that we were charged under was a non existing law repealed by Congress over 33 years ago. We also supplied a copy of Public Law 97-116 sec 19, although that Law came into effect on December 29, 1981 (after our entry into the United States), it contains material relevant to our situation, it provides:

SEC. 19. The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act shall not apply to any alien who is present in the United States and who, on or before June 1, 1978

(1) qualified as a nonpreference immigrant under section 203(a)(8) of such Act (as in effect on June 1, 1978);

(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.

We also supplied a letter we had written to Chief Justice Warren Burger earlier, explaining our situation.

Judge Milhollan, Chairman of the B.I.A. unjustly delayed our case for one full year. He refused us opportunity to examine and brief the evidence against us which contained submissions unknown

to us. He convicted us of totally new and irrelevant charges. We appealed their decision to the Fifth Circuit Court of Appeals. The Petition for Review contained 35 items and still had a 20 minute oral argument left over. It included evidence that the Immigration Judges, the U.S. Attorney and the I.N.S. had destroyed, withheld, and tampered with the evidence, which they never denied, but only in part admitted, when the U.S. Attorney stated in their Brief, "Part of the proceedings held on March 6 and April 12, 1984, could not be adquately transcribed and therefore do not appear as part of the Certified Administrative Record."

We wrote again, this time by certified mail, return receipt, to the U.S. Attorney General Edwin Meese and his Assistant Attorney General Bradford Reynolds, to U.S. Attorney Helen Eversburg F.B.I. Director William Webster, Chief

Immigration Judge William Robie and Chief Judge Charles Clark of the Fifth Circuit Court of Appeals, F.B.I. Agent John W. Dalsey and to the Commission on Immigration and the Permanent Subcommittee on Investigations requesting a Grand Jury to hear and investigate our complaint. The only reply came from Assistant Attorney Bradford Reynold's office, telling us that in his opinion no violation of law had occurred. In desperation, we continued to write for help, including letters to the White House Chief of Staff James Baker, Senior U.S. District Judge D.W. Suttle and Congressman Henry B. Gonzales, who was the first to give this matter immediate attention. He requested an explanation from Mr. Casillas and when he recieved no reply, 5 months later he wrote again. He still recieved no reply, but did get an acknowledgement of his letter. Senator Lloyd Bentsen

also replied to us and inquired about our case. In the meantime, the Fifth Circuit Court of Appeals did not uphold the law and collaborated with the Attorney General in malicious prosecution and false conviction and ruled that the "petitioners never took any action to legitimate their presence in the United States". They also ruled that we been charged with violation of 8 U.S.C. § 1251(a)(1) which was a lie and that deportability was sustained by "clear convincing and unequivocal evidence." The rest of their unpublished opinion contained a scrabble of laws with no application to our case at all, as well as a number of false statements. Subsequently, they denied us a stay of Mandate and the right to appeal their decision to the Supreme Court.

Since our case was never heard or tried and oral argument was denied us

throughout, we petitioned the Supreme Court for a Writ of Certiorari anyway.

Four days before Christmas on December 19, 1985, the San Antonio I.N.S. refused to wait for the Writ of Certioari from the Supreme Court or any legal disposition of our cases pending and issued a final deportation order, that on January 3, 1986 at 10.30 AM, my wife and I be flown out at taxpayers expense with no more than 70 lb. of luggage each.

On December 23, one day before Christmas, as though to wish us a Merry Christmas, Mr. Robertson, from the San Antonio I.N.S. phoned to confirm and explain their Order. He assured me that we definitely would not be allowed to leave on our own, in our cars together, that we would be separated three ways, that my wife would be flown back to Canada and I would be flown

to Germany, since that was my place of birth and that they had not yet decided what they would do with our children and property.

I immediately prepared a temporary restraining order against the I.N.S. and on January 2, 1986 flew to Washington, D.C. and on that date filed it and the Writ of Certiorari in the Supreme Court. However, the Assistant Clerk of Court, Mr. Turner dismissed both. His first reason was that he had no record of recieving the docket fee from us. When I showed him proof that we paid it, he went into his office in the back and a few minutes later returned with a document signed by him which stated: "The application is denied" Byron R. White, January 2, 1986 and explained to me that Justice White had denied us both, the petition for Writ of Certiorari and the temporary restraining order. Since that

seemed timely impossible to me, I started an immediate investigation and with the help of the Court's Police and U.S. Marshall, discovered that Justice White was not even in the Court Building, but was in fact at home and had no knowledge of Mr. Turner's doing.

It was plain horror to all of us, especially to our children, when they realized that the next day the I.N.S. was about to arrest Mom and Dad and leave them behind, unprotected and alone. It was indeed shocking to find such terrible injustice in the U.S.A.

It was with heavy hearts, that we left our boys behind, even though it would only be for a few days, and with the assurance of our friends and neighbors that they would look after the boys, help them to sell off our furniture and belongings and assist them in anyway they could. We are not the type of people

that would turn themselves into a bunch of crooked government officials, so we took what we could in our car and headed north to freedom and none too soon. The next morning very early, our boys were still sleeping, two I.N.S. men knocked on our door, armed with arrest and search warrants, they entered and searched the house.

On the way home, we stayed off the main highway and with a West Virginia license plate made it back to Canada and freedom. One of our Canadian I.N.S. officers noted, "They had half of their forces looking for you. They even asked us to help them. You must have something, they really want." Since we never committed any crimes, and our only mistake was to trust the U.S. Government and invest in their country, they obviously wanted only the documents in our possession, which proved the embarassing facts.

STATEMENT of the CASE

On November 29, 1984 we filed a complaint in District Court in San Antonio Texas, case No. (SA-84-CA 2477) for Four Million Dollars as compensation for damages we suffered due to the negligence of the San Antonio I.N.S. and requested Trial by Jury.

The complaint alleged that Mr. Richard Casillas, the District Director of I.N.S., bound by Article VI of the Constitution, did recklessly and in disreguard for the Laws, inflict financial, health, and mental anguish on us as a family, that he violated the Fifth and Eighth Amendments of the U.S. Constitution and failed to enforce the Statutory requirement under which the I.N.S. operates. He inflicted cruel and unusual punishment upon us and deprived us of our rights, life, liberty and property without due

process of law. He denied us application for alien registration cards and refused to issue us alien registration cards, temporary restricted alien registration cards or give us a written statement and refused us voluntary departure. He restricted our freedom to travel, to leave and return freely to this country and held us involuntary confinement without due process of law.

I supplied evidence to the Court that prior to coming here I was president of three manufacturing companies, owned two western stores and did business in twenty seven countries around the world, as such have an earning potential of over $200,000.00 per year. However, without the alien registration cards and Social Security cards, we could not engage in any business, thereby sustained heavy financial losses, which combined with the fact that our entire family

suffered tremendous emotional distress and lived in constant fear of arrest and deportation, justifies the amount named for damages.

Mr. Casillas in his defense, did not deny our allegations, instead he gave a sworn statement to have "no knowledge" of us. This was submitted into Court by the Assistant U.S. Attorney Mr. Gregory Ball, the same person, who on July, 10, 1981 took the Original Statement from me for the I.N.S. (Record for Deportable Alien Form I 213).

Assistant Director, Federico Bustamante supported Mr. Casillas with a sworn statement of his own and District Counsel, Eloise Rosas submitted that we were also quilty because: quote "they aquired property here and sent their children to school". We immediately supplied ten documents to the Court and stated that if necessary, we had further evidence

which proved without a doubt that the defendants lied, committed perjury and gave false statements. We advised Judge Prado that this reckless disregard for the truth supported conviction under Title 18 § 1001.

Judge Prado however, made his decision on May 7, 1985 and ruled that his Court had no jurisdiction and that he "without determining the various jurisdictional bases", found the defendant did no wrong.

We appealed District Judge Prado's decision to the Fifth Circuit Court of Appeals, however that Court refused to review our Case or do anything. When we recieved no action on our case for over seven months, we requested a decision. Shortly thereafter, on December 27, 1985 Judges Gee, Randall and Davis without giving an Opinion on the issues, dismissed the Case on the bases of a

prior decision by their Court (Case 85-4327). In that case, Judges Williams Higginbothem, and Jolly failed to take due account of the rule of Prejudicial error, in fact they made their decision without even being in possession of the Record on Appeal, which the Clerk of Court had prematurely disposed of and then actually upheld a non-existing law, a Law that Congress saw fit to repeal 33 years earlier.

That Case (85-4327) may well be the most significant in history of American Justice, as it went through the entire American Judicial System (through four Courts), from the lowest to the highest in the Land, without ever being heard or tried and yet, it was decided by all four Courts.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GEORGE KALIN, ET AL, FILED: May 7, 1985
Plaintiffs,
VS. CIVIL ACTION NO. SA-84-CA-2477
RICHARD CASILLAS and
UNITED STATES OF AMERICA,
Defendants.

ORDER

The matter before the court is defendants' motion to dismiss and/or for summary judgment. Also before the court is plaintiffs' motion for a temporary restraining order received on May 3, 1985.

Plaintiffs' filed their complaint on November 29, 1984, alleging that defendants, Richard Casillas, District Director of the Immigration and Naturalization Service, and the United States, deprived them of liberty without due process and imposed cruel and unusal

punishment upon them by denying them alien registration cards pursuant to Public Law 97-116, Section 19. Plaintiffs seek $4 million in damages alleging financial, physical and mental injuries.

Defendants' motion, filed Febraury 26, contends that this Court is without jurisdiction in that plaintiffs have failed to state a claim upon which relief can be granted. Upon review of the argument, authorities and evidentiary materials submitted, the Court finds that defendants are entitled to judgement as a matter of law.

Without determining the applicability of the various jurisdictional bases asserted by plaintiff, it is clear that defendants have not wrongfully denied plaintiffs alien registration cards. Plaintiffs have failed to allege or prove that they meet the eligibility requirements of either 8 C.F.R. §245.1(c)(i)

or 8 C.F.R. §212.8(b)(4). Both require plaintiffs to have made application for adjustment of their immigrant status and excludability pursuant to 8 U.S.C. §1182(a)(14). Section 245.1(c)(2)(i) requires plaintiffs to have applied for adjustment before June 1, 1978. Section 212.8(b)(4) requires plaintiff to have filed a Form I-526 statement establishing the fact of their investment in the particulars as laid out therein. Plaintiffs do not allege that they have made the required application under either section. Nor have they set forth any other provision of the Immigration and Naturalization Act which supports their position. Accordingly, defendants' motion for summary judgment is GRANTED.

On May 3, plaintiffs submitted what was captioned a Motion for Temporary Restraining Order of Deportation. Although not in conformity with Federal Rule of

CIVIL PROCEDURE 65, the requests have been considered. Plaintiffs ask the Court to restrain the United States Department of Immigration and Naturalization Service "from taking any further steps in their proceedings against us; known as File #A27 169 321 and A27 169 381, pending judicial review thereof and also pending hearing of our case in Judge Edward C. Prado's Court (SA84CA2477)". In light of the Court's dismissal of plaintiffs' action against defendants Casillas and the United States for money damages, the request for a restraining order pending a hearing in SA-84-CA-2477 is moot and is therefore DENIED.

Insofar as they request a stay pending judicial review of the deportation proceeding, the Court notes that plaintiffs have not heretofore formally sought judicial review of the March 28 final Order of deportation of the Board of

Immigration Appeals. Furthermore such an action for judicial review must be filed with the Fifth Circuit Court of Appeals in New Orleans; this Court does not have jurisdiction to hear such an action. 8 U.S.C. §1105a; 28 U.S.C. §2342. Accordingly, Plaintiffs' request is DENIED in all respects.

SIGNED and ENTERED this 7th day of May, 1985.

EDWARD C. PRADO

UNITED STATES DISTRICT JUDGE

APPENDIX A.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 85-2374

Summary Calendar

GEORGE and GAIL KALIN,

Plaintiffs-Appellants,

verus

RICHARD M. CASILLAS, District Director
Immigration and Naturalization Service,

Defendant-Appellee

Appeal from the United States District Court for the Western District of Texas

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December 27, 1985

Before GEE, RANDALL, and DAVIS, Circuit Judges.

PER CURIAM:

For the reasons stated in the order of the trial court filed on May 7, 1985, as well as those set out in our opinion in KALIN v. Immigration and Naturalization Service, No. 85-4327 (October 25, 1985), the judgement of the District Court is AFFIRMED.

MOTION FOR STAY OF MANDATE

was submitted December 31, 1985 and was presented for decision on January 9, 1986.

Mandate was granted on January 10, 1986.

Statement of Petition to the Supreme Court was submitted on Febraury 6, 1986, stating that the Writ of Certiorari will be submitted within the 90 day time limit provided.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985. CASE NO._____

GEORGE KALIN and FAMILY, PETITIONERS.

VS

RICHARD M. CASILLAS

UNITED STATES OF AMERICA, RESPONDENTS.

PROOF OF SERVICE

WE THE PETITIONERS, GEORGE KALIN AND FAMILY AFTER BEING DULY SWORN, DEPOSES AND SAY THAT PURSUANT TO RULE 28, 4(a) OF THIS COURT, WE SERVED THE FOREGOING PETITION FOR WRIT OF CERTIORARI TO THE:

COUNSEL FOR RESPONDENTS.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT

SOLICTOR GENERAL OF THE UNITED STATES

ATTORNEY GENERAL OF THE UNITED STATES

George Kalin

GEORGE KALIN

SUBSCRIBED AND SWORN BEFORE ME

THIS 27 DAY OF February 1986

DANIEL W.H. JARVIS
PROFESSIONAL CORPORATION
735 WHITEFIELD DRIVE N.E.
CALGARY, ALBERTA T1Y 5R1